

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 01-1139 (JKF)
. .
W.R. GRACE & CO., .
et al., .
. 824 North Market Street
. Wilmington, DE 19801
Debtors. .
. September 2, 2008
. 1:37 p.m.
.

TRANSCRIPT OF HEARING
BEFORE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY COURT JUDGE

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1 THE CLERK: All rise.

2 THE COURT: Good afternoon. Please be seated. This
3 is the matter of W.R. Grace & Company, 01-1139. Participating
4 by phone, Gregory Boyer, Elizabeth Cabraser, Edward Westbrook,
5 Joseph Schwartz, Marti Murray, Jay Sakalo, Matthew Kramer, Alan
6 Runyan, Elizabeth Devine, Darrell Scott, Daniel Speights, Anne
7 Marie Aaronson, Beau Harbour, James Restivo, Tara Nauful, Ari
8 Berman, Marion Fairey, Lewis Kruger, Andrew Craig, Joshua Katz,
9 Ramsey Lewis, Robert Givone, Brian Pastu -- I'm sorry,
10 Pastuszenski, David Siegel, Sandy Esserman, Laura Hammond,
11 Jennifer Whitener, Theodore Freedman, Terence Edwards, Jason
12 Solganick, Barbara Harding, Shayne Spencer, Mark Shelnitz,
13 Gerald George, Richard Levy, Arelene Krieger, Gentry Klein,
14 David Parsons, Martin Dies, John Phillips, Christina Kang,
15 Melanie Dritz, Paul Norris, Christopher Candon, Peg Brickley,
16 Dale Cockrell, Douglas Cameron, Van Hooker, Lisa Esayian,
17 Jacqueline Dais-Visca, Janet Baer, Alex Mueller, Scott Baena,
18 Joseph Radecki, Andrew Chan, Robert Horkovich, Walter Slocombe,
19 David Beane, Debra Felder and David Bernick. I'll take entries
20 in Court, please.

21 MS. BAER: Good afternoon, Your Honor. Janet Baer,
22 on behalf of W.R. Grace.

23 MR. BERNICK: David Bernick on behalf of Grace.

24 MR. O'NEILL: James O'Neill, on behalf of Grace.

25 MR. PASQUALE: Good afternoon, Your Honor. Ken

1 Pasquale, Stroock and Stroock and Lavan, for the unsecured
2 creditors' committee.

3 MR. SHIMSHAK: Good afternoon, Your Honor. Steve
4 Shimshak, Paul Weiss, for the bank lenders. Also appearing
5 with me is my colleague, Margaret Phillips.

6 MR. COBB: Good afternoon, Your Honor. Richard Cobb,
7 Landis, Rath & Cobb, on behalf of the bank lenders.

8 MS. FELDER: Good afternoon, Your Honor. Debra
9 Felder, Orrick, Herrington & Sutcliffe, on behalf of the future
10 claimants' representative.

11 MR. MANDELSBERG: Good afternoon, Your Honor. Steven
12 J. Mandelsberg, Hahn & Hessen, on behalf of the State of
13 California Department of General Services.

14 MR. LOCKWOOD: Good afternoon, Your Honor. Peter
15 Lockwood, Caplin & Drysdale, for the ACC.

16 MR. HOGAN: Good afternoon, Your Honor. Daniel Hogan
17 on behalf of the Canadian Zonolite claimants.

18 MR. BROWN: Good afternoon, Your Honor. Michael
19 Brown on behalf of One Beacon and Seaton.

20 MR. MONACO: Good afternoon, Your Honor. Frank
21 Monaco for the Crown.

22 MR. TACCONELLI: Good afternoon, Your Honor.
23 Theodore Tacconelli for the property damage committee.

24 THE COURT: Ms. Baer?

25 MS. BAER: Thank you, Your Honor. Your Honor, Agenda

1 Item Number 1 on the docket is another continuance on the
2 Massachusetts Department of Revenue claim, and we'd ask that it
3 just be continued to the September 29th hearing.

4 THE COURT: All right.

5 MS. BAER: Your Honor entered orders on Number 2,
6 which is the L-TIP motion, and Number 3, our motion to approve
7 a settlement with WEJA, Inc. and others.

8 Agenda Item Number 4, Your Honor, is the Scott's
9 Company's continuing motion for permission to commence an
10 adversary proceeding with respect to whether or not there's
11 shared insurance. Your Honor, as I reported last time, we have
12 provided the Scott's Company with all of the Grace insurance
13 policies and some additional information. They are digesting
14 that information. I communicated with Scott's counsel last
15 week. They are awaiting Grace filing its Chapter 11 plan, and
16 I think we've agreed that we will continue this matter until
17 September 29th, see what gets filed, and then once they are
18 able to see that and react to it we can figure out who needs to
19 talk to who to proceed.

20 THE COURT: All right.

21 MS. BAER: Your Honor, Agenda Item Number 5 is the
22 continued motion of the City of Charleston to lift stay. As
23 you might recall this is a situation where the City of
24 Charleston would like to take by eminent domain a piece of
25 Grace property if they cannot negotiate a sale of that property

1 from Grace to them. The matter continues, Your Honor. The
2 ball is really in the City's court right now. The City is
3 working on finalizing a phase one environmental report and
4 developing a scope of work for assessment that the city
5 believes is necessary in order to do a Brownfields agreement,
6 which will be an agreement necessary for them to commence what
7 they need to do, construct on the property and the like. So,
8 right now there's nothing further for Grace to do while these
9 matters continue on, and we would ask that this motion just be
10 continued again to the September 29th hearing.

11 THE COURT: Is the City in agreement?

12 MS. NAUFUL: Your Honor, Tara Nauful on behalf of the
13 City. We are in agreement with that.

14 THE COURT: All right. Thank you.

15 MS. BAER: Thank you, Your Honor. Agenda Item Number
16 6, Your Honor, is the claimant State of California's motion for
17 leave to file an expert report. I believe claimant's counsel
18 is here, and I know Mr. Restivo is responding on behalf of the
19 debtor.

20 THE COURT: All right.

21 MR. RESTIVO: Good afternoon, Your Honor. Jim
22 Restivo.

23 MR. MANDELSBERG: Good afternoon, Your Honor. Steven
24 Mandelsberg, State of California. Since it's our motion,
25 perhaps I'll just briefly address it first. Your Honor, we

1 filed this motion for leave to file an expert report of a
2 hazard expert, Dr. William Longo. W.R. Grace did respond, and
3 although it preserves the right to object to certain aspects of
4 the report at any hearing, I don't believe it has objected to
5 the motion on timeliness or any other grounds. We believe the
6 motion should therefore be granted. The motion itself sets
7 forth the predicates for it. I'm not going to waste time,
8 unless the Court has any questions, in repeating them. We did
9 file a reply to address some comments in the response that we
10 thought related to the pending summary judgment motions that
11 are extraneous to this motion, so we believe we've submitted an
12 order, and believe the motion should be granted.

13 THE COURT: Mr. Restivo?

14 MR. RESTIVO: Your Honor, can you hear me?

15 THE COURT: Yes, sir.

16 MR. RESTIVO: Your Honor, we have no objection to the
17 entry of the order. We are not objecting to the timeliness of
18 the filing of the report. We obviously reserve all other
19 objections to its relevancy or admission.

20 THE COURT: Okay. Did you bring an order with you,
21 Mr. Mandelsberg?

22 MR. MANDELSBERG: I believe we have submitted an
23 order. I don't have a copy with me. I can submit one --

24 THE COURT: No, that's fine. I'll --

25 MR. MANDELSBERG: But I do believe we've submitted an

1 order.

2 THE COURT: I'll just have it stamped on the
3 electronic filing system if you don't have one here.

4 MR. MANDELSBERG: Thank you very much, Judge.

5 THE COURT: Okay. Thank you.

6 MS. BAER: Your Honor, Agenda Item 7 and 8 relate to
7 traditional property damage. A number of settlements have been
8 recently filed, and Mr. Restivo can give an update to the Court
9 on that situation.

10 MR. RESTIVO: Your Honor, with respect to Item Number
11 7, the status report on PD claims, we did file the Jamison -- a
12 motion to approve the Jamison Hospital settlement on August 25,
13 at Docket Number 19372. The Court will recall that we were
14 using Jamison Hospital as the settlement template. We filed
15 this morning the Bayshore Hospital motion to approve
16 settlement. I understand that the Children's Hospital
17 settlement is in the process of being signed up and that ought
18 to be filed within the next day or two. Also signed up, I am
19 told, the settlement of 32 California State University property
20 damage claims and 50 University of California property damage
21 claims, and a motion seeking approval of those settlements
22 likewise should be filed in the next couple of days. Pacific
23 Free Homes (sic) is another single case which settled. That is
24 out for execution by the parties. I believe that should also
25 be filed in the next few days. That will leave us, Your Honor,

1 with documenting the settlement of 16 remaining -- its U.S.
2 claims. We hope to get settlement agreements out to Mr.
3 Speights later this week, get them signed up and filed. That
4 will leave us, Your Honor, with 74 unresolved property damage
5 claims. Of those 74, 55 come from Canada. Mr. Speights gave
6 me some counter proposals for some ideas I had given him. I
7 need to disclose and discuss those counter proposals with the
8 debtor, and so, those Canadian negotiations still appear to
9 have some life left in them, and Mr. Speights and I will
10 continue to talk and hopefully be in a position at the next
11 omnibus to pronounce that we've resolved the cases or ask the
12 Court to rule on the summary judgment motions.

13 Sixteen of the case that are remaining are the
14 Department of General Services claims, which we talked about as
15 the first order of business. Those are sub judice before Your
16 Honor and are ready to be decided. The same is true with a
17 single Macerich claim. That has been briefed and argued and
18 before the Court. And that would leave two remaining claims,
19 Your Honor, a claim which was pending in New York State.
20 That's to lift the stay. We probably will be coming back to
21 the Court with a suggestion on Solo. Last is the Anderson
22 Memorial Hospital itself, not the class action, but the actual
23 hospital building. And that's the status of the 74 remaining
24 unresolved property damage claims.

25 THE COURT: Okay.

1 MR. RESTIVO: Your Honor, you are still carrying on
2 your agenda Items 8 and 9, which was a motion by Mr. Speights
3 to alter or amend in order to deal with issues relating to the
4 Jamison, Bayshore, and Children's Hospital claims. Because
5 they have now been settled, we would intend to submit an order
6 dismissing those motions as moot due to settlement, and we will
7 do that once the settlements are approved, assuming they are
8 approved, and that will take Items 8 and 9 off your agenda,
9 Your Honor.

10 THE COURT: All right.

11 MR. RESTIVO: And that's the conclusion of my report.

12 THE COURT: Ms. Baer?

13 MS. BAER: Your Honor, that takes us to Agenda Item
14 Number 10, which is a status with respect to Canadian ZAI.
15 Your Honor, I am very pleased to report that this morning we
16 signed up a settlement with the Canadian ZAI claimants. Your
17 Honor, unfortunately this settlement does not involve the
18 Crown, so there are still outstanding issues with respect to
19 the Crown. The Crown made great efforts to try to participate
20 in this settlement but ultimately decided not to at this point
21 in time. There is still the room for the possibility of still
22 speaking with the Crown and ultimately getting them involved in
23 the settlement. But, Your Honor, we're at the point where we
24 have to move forward because this settlement will be an
25 integral part of our Chapter 11 plan.

1 Your Honor, with respect to the settlement
2 procedurally, what we would like to do, Your Honor, first is go
3 to the Canadian Court and get the Canadian Court's approval of
4 the settlement terms. Your Honor, there are Canadian law
5 issues. These are Canadian pending lawsuits. And procedurally
6 it makes sense to go to the Canadian Court first.

7 Secondly, Your Honor, we would like to come to this
8 Court and ask for an approval of a bar date notice program for
9 Canada. It will be essentially identical to the bar date notice
10 program we had previously provided for Canada that we cut out
11 while we were doing the settlement negotiations. This
12 settlement involves the establishment of a ZAI property damage
13 fund for the payment of ZAI property damage claims in Canada to
14 the extent that there are, in fact, allowed claims there. The
15 notice and bar date program is integral to that. It will bring
16 out the claims, and it will be those people who file timely
17 claims that would then be entitled to look to the Canadian
18 settlement fund for payment of the claims.

19 Your Honor, the settlement calls for Grace to
20 contribute 6.5 million to the property damage ZAI fund. Out of
21 that fund fees will be funded, expenses will be funded, and
22 monies will be available for allowed Canadian ZAI PD claims.
23 The settlement agreement outlines the terms under which a claim
24 can proceed. It outlines the terms under which a claim would
25 be paid, if at all.

1 Your Honor, because we just signed this up we have
2 not yet had the opportunity to circulate it to the various
3 committees. We will do so shortly.

4 The Canadian settlement provides that the terms of
5 the settlement will ultimately be baked into our Chapter 11
6 plan. We will have a separate class of claims for Canadian ZAI
7 PD claims. Those claims will be paid pursuant to this
8 settlement agreement with the establishment of this trust.
9 Canadian ZAI personal injury claimants will have the
10 opportunity to file their claims against the trust that's being
11 set up, the 524(g) trust to deal with all personal injury
12 claims. There will be no separate and different treatment for
13 Canadian PAI -- I'm sorry -- Canadian ZAI PI claims to the
14 extent there are any.

15 Your Honor, at this time, again, procedurally all we
16 would ask from Your Honor at this point is to permit us to go
17 to Canada first and get the approval of the settlement in
18 Canada. At the same time, Your Honor, we would then anticipate
19 filing a motion here for approval of the Canadian ZAI notice
20 program, bar date and notice program. And I have nothing more
21 to report.

22 THE COURT: Mr. Hogan?

23 MR. HOGAN: Thank you, Your Honor. Daniel Hogan, for
24 the Canadian ZAI claimants. Your Honor, that was an accurate
25 representation of the status of events. We had hoped that the

1 Crown could be involved. Ultimately they weren't. We've
2 decided to move forward with the debtor and we're ready,
3 willing and able to proceed to do that. We agree that we need
4 to go back to the Canadian Courts to garner their approval,
5 that Court's approval, and then I imagine we'll be back before
6 the Court here with regard to the bar date motion.

7 THE COURT: Okay. So, what do you need from me?

8 MS. BAER: Your Honor, at this point I think all we
9 need is Your Honor's blessing for us to go to Canada first, and
10 we -- the next thing I think we will be doing here is we will
11 be filing a motion for approval of the bar date.

12 THE COURT: Okay. Well, go to Canada.

13 (Laughter)

14 THE COURT: But come back.

15 (Laughter)

16 MS. BAER: That's our plan. It is a lovely spot, but
17 that's is our plan, is to come back.

18 THE COURT: All right.

19 MR. HOGAN: Thank you, Your Honor.

20 THE COURT: So, this is just going to be carried
21 until -- you're going to put it back on an appropriate agenda?
22 Is that the idea?

23 MS. BAER: Yes, Your Honor. I think, frankly, the
24 matter here is just simply a status, and I think that can be
25 taken off the agenda. We would anticipate filing a motion for

1 approval of the bar date shortly. Clearly we won't be able to
2 make the September 29th hearing unless we shorten the notice
3 period. And I probably wouldn't want to do that anyway. I'm
4 not sure we'll have the Canadian approval yet. But I think the
5 goal would be to get it on file no later than so that it can be
6 heard for the October 20th omnibus hearing.

7 THE COURT: All right. Okay. Thank you.

8 MS. BAER: Your Honor, the last item on the agenda is
9 really just a status with respect to our Chapter 11 plan, and
10 the objection with respect to default interest. I don't think
11 we have anything specific to take up. Mr. Bernick is here.

12 THE COURT: Mr. Bernick?

13 MR. BERNICK: I think that there really isn't
14 anything specific to take up at this point. Just very, very
15 briefly, there are obviously very extensive efforts underway to
16 complete the finalization of the plan, and we hope that that
17 will be -- that that is highly, highly imminent. I know that
18 we've promised, at some point a little bit earlier on, but
19 we're still on track to get it done. There's to be a meeting
20 tomorrow in New York that we think is going to be important to
21 finalizing a lot of that. But we're anxious to get the plan
22 filed in the next few days, so, in that respect I think we're
23 still on track. We're sensitive to the fact that Your Honor I
24 think has asked to have two of the disclosure statement hearing
25 days in October, the first two, released for other purposes.

1 That still leaves us with three dates, I think, in October,
2 which ought to be more than sufficient, so we're still on track
3 with that. We have the confirmation hearing scheduled in
4 January. We're still on track for that.

5 With respect to the default interest issue, pursuant
6 to contacts with the Court, we're going to have trial briefs
7 submitted simultaneously on that matter by this Friday, so that
8 it can then be heard as scheduled. And insofar as the
9 discovery that relates to that is concerned, there was one
10 deposition and there's some documents that have been exchanged.
11 There may be a few more. But that essentially is all but
12 complete. So, I think we're on track to have the matter
13 briefed before Your Honor by this Friday and then to be heard
14 as scheduled a little bit later on in the month. I don't know
15 if Mr. Pasquale wants to add anything --

16 MR. PASQUALE: Just so we're clear --

17 MR. BERNICK: -- or counsel for the bank lenders?

18 MR. PASQUALE: I'm sorry. Ken Pasquale for the
19 unsecured creditors' committee. The date I think is now the
20 29th, Your Honor. I think you've already signed an order to
21 that effect. We're going to have the hearing on the next
22 omnibus.

23 THE COURT: I --

24 MR. PASQUALE: The only thing I'll add is pursuant to
25 the Court's directions, the parties did meet in person with

1 principals and try to resolve the issue. I think everyone did
2 proceed in good faith, but we were not able to resolve the
3 issue, so we will be, as we stand here today, going ahead with
4 the hearing.

5 THE COURT: Okay. I know I agreed to move it, but a
6 word to the wise, I mean, that is an omnibus hearing date.

7 MR. BERNICK: Well, I think --

8 MR. PASQUALE: We understood that there was not much
9 on the agenda that day, and this would work out, Your Honor.
10 This was in consultation, of course, with the debtors.

11 MR. BERNICK: We're set to start earlier that day, I
12 think at ten o'clock. And I don't think that anybody believes
13 that our argument is going to be -- is going to put in jeopardy
14 whatever other plans people have for later on in the day's -- I
15 know that we discussed briefly, Your Honor, Rosh Hashanah
16 starts at sundown that evening, and that was one of the reasons
17 that we wanted to have the omnibus scheduled earlier, so I
18 think we'll get everything done in a very timely fashion, and
19 there won't be an issue. And so, we're on track right now to
20 have that issue teed up before Your Honor, which of course is
21 very important in terms of our progress towards getting to the
22 confirmation hearing. There's nothing else that we have to
23 report. I don't know whether my esteemed colleagues from the
24 ACC, and FCR, and PD, and anyone else who is, I guess, an
25 interested party in the case has to add, but that's all that

1 the debtor has to report.

2 THE COURT: Anyone have anything to add? You mean
3 Grace is going to get done in a half an hour?

4 (Laughter)

5 THE COURT: Be still my heart. Okay. All right.
6 See you next month. We're adjourned.

7 MR. BERNICK: Thank you.

8 * * * * *

C E R T I F I C A T I O N

I, TAMMY DeRISI, court approved transcriber, certify
that the foregoing is a correct transcript from the official
electronic sound recording of the proceedings in the above-
entitled matter.

/s/ Tammy DeRisi

Date: September 9, 2008

TAMMY DeRISI

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